

PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Docket No: Q77528

Wim HENDERICKX, et al.

Appln. No.: 10/690,544

Group Art Unit: 2619

Confirmation No.: 6418

Examiner: Melanie JAGANNATHAN

Filed: October 23, 2003

For: TELECOMMUNICATION ROUTER

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.41, Appellant respectfully submits this Reply Brief in response to the Examiner's Answer dated October 2, 2008. Entry of this Reply Brief is respectfully requested.

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STATUS OF CLAIMS

Claims 1-3 and 5-9 are currently pending and were previously presented. Claim 4 is canceled. Claims 1-3 and 5-9 are the subject of this appeal. All claims pending in the present application are set forth in their entirety in the attached Claims Appendix.

Claims 1-3 and 5-9 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 7,225,271 to DiBiasio et al.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

There is only one issue in this appeal: whether claims 1-3 and 5-9 are improperly rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 7,225,271 to DiBiasio et al.

For the purposes of this appeal, dependent claims 2, 3, and 5-9 stand together with independent claim 1.

ARGUMENT

Claims 1-3 and 5-9 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 7,225,271 to DiBiasio et al. (“DiBiasio”). Appellant traverses this rejection for at least the following reasons.

A. Independent Claim 1

In the Answer of October 2, 2008, the Examiner now changes the argument from that presented in previous Office Actions, but still fails to support a rejection under 35 U.S.C. § 102. The Examiner previously asserted that the “Queue selector 510 manages the queues Q1-Q4.” (Office Action of November 28, 2007 at 7.) The Examiner, at that time, inexplicably relied on a contrary and unsupportable contention that the “RSVP Engine 424” managed the queues. Now, the Examiner’s contention has changed again, to assert that it is actually the “classification engine,” or possibly a combination of the classification engine and the RSVP engine of DiBiasio, which manages the queues.

Nonetheless, it remains clear that none of the above-cited components of DiBiasio “discard[s] packets coming from said packet classifier when a predetermined threshold filling level of the queue is reached,” as recited in claim 1. (emphasis added.)

The Examiner asserts that the required discarding of packets is performed by the RSVP engine when it denies a reservation request. However, claim 1 requires that the packets discarded are “coming from said packet classifier.” If either the classification engine or RSVP engine of DiBiasio were considered to be discarding packets, such packets would not be “coming from [a] packet classifier,” because they would not have been allowed to pass the classification

engine 502. Thus, the Examiner's contentions fail to explain how packets could be discarded by DiBiasio after exiting the classification engine 502 en route to the queues Q1-Q4.

As Appellant explained in the Appeal Brief of June 13, 2008, the denial of a reservation request is also fundamentally different from discarding packets. While denial of a reservation request involves returning a high-level message as part of the RSVP protocol, discarding packets is a packet-level operation.

Thus, in the case of the RSVP engine of DiBiasio, a request in a higher-level protocol (RSVP) is affirmatively denied by returning a denial message; the "packets" which are denied in that case have not yet even been sent or received, since the requester is making a "reservation request" to reserve bandwidth for a later transmission. This transmission does not take place if the request is denied. It would be quite clear to one of skill in the art that packets cannot be "discarded" if they have not yet been received. In contrast to DiBiasio, claim 1 requires that packets be stored and discarded "when a predetermined threshold filling level of the queue is reached." Thus, the packets must be received prior to being discarded.

Finally, the requirement that packets be discarded "when a predetermined threshold filling level of the queue is reached" is simply absent from DiBiasio. The Examiner can point to no portion of DiBiasio that discloses determining when a predetermined threshold filling level has been reached, or to where or how a predetermined threshold is set, stored, or checked.

The only apparent portion of DiBiasio that the Examiner cites as teaching this feature of claim 1 is mentioned on page 4 of the Examiner's Answer, where the Examiner contends that "[t]he admission control entity 430, then determines whether sufficient available bandwidth also

exists at the interface.” On its face, this alleged teaching of DiBiasio is insufficient to teach the above-quoted feature of claim 1, (1) because a determination regarding available bandwidth is not equivalent to a specific determination of whether a predetermined threshold is reached; and (2) because it is not even a determination with respect to the queues, but rather, to the interface.

For example, the Examiner in that section cites col. 10, lines 56-59 of DiBiasio, which state that the system “determines whether sufficient available bandwidth also exists at the interface,” and goes on to describe the “output interface 406b” and its total bandwidth in kilobits/second. In fact, DiBiasio is completely silent as to any predetermined threshold for a queue filling level, any checking of such a threshold, or any determination to discard packets based on such a check. Thus, based on this deficiency alone, the Examiner’s rejection should be withdrawn.

In sum, DiBiasio contains no teaching of an intentional discarding of packets by a queue manager, and contains no teaching that packets should be intentionally discarded “when a predetermined threshold filling level of the queue is reached.” Thus, DiBiasio fails to teach each and every required element of claim 1, and therefore, fails to anticipate claim 1. Accordingly, Appellant respectfully requests that the rejection of independent claim 1 and its dependent claims 2, 3, and 5-9 be withdrawn.

CONCLUSION

For the above reasons as well as the reasons set forth in Appeal Brief, Appellant respectfully requests that the Board reverse the Examiner's rejections of all claims on Appeal. An early and favorable decision on the merits of this Appeal is respectfully requested.

Respectfully submitted,

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